

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CECILIA ABREU-RODRÍGUEZ, et al.,

Plaintiffs,

v.

FEDERAL EMERGENCY MANAGEMENT
AGENCY and CRAIG FUGATE,

Defendants.

Civil No. 09-1951 (JAF)

ORDER

On January 28, 2010, Defendants moved to dismiss Plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process. (Docket No. 10.) Plaintiffs opposed the motion on February 2, 2010. (Docket No. 11.)

Federal Rule of Civil Procedure 4(m) requires service of process "within 120 days after the complaint is filed." Unless the plaintiff shows good cause for failing to meet the deadline, we may choose between dismissal without prejudice and an allowance for service within a specified time. Fed. R. Civ. P. 4(m). In a case against the government, Rule 4(i)(1)(A)(i) requires the plaintiff to serve the summons and complaint to the U.S. attorney for the federal district where the case is brought. The plaintiff may also "send a copy of [the summons and complaint] by registered or certified mail to the civil-process clerk at the United States attorney's office." Fed. R. Civ. P. 4(i)(1)(A)(ii). The plaintiff must also "send a copy of [the

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1 summons and complaint] by registered or certified mail to the Attorney General of the United
2 States at Washington, D.C.” Fed. R. Civ. P. 4(i)(1)(B).

3 The government argues that Plaintiffs have, without good cause, failed to properly serve
4 the U.S. Attorney for this district and the Attorney General of the United States within 120 days
5 of filing their complaint. (Docket No. 10.) In response, Plaintiffs admit this failure, but submit
6 evidence that they have remedied this defect by tendering process to the U.S. Attorney for
7 Puerto Rico and the Attorney General by certified mail. (Docket No. 11.)

8 We find no reason to dismiss this case. Although Plaintiffs previously failed to conform
9 to the requirements of Rule 4(m) without good cause, we had the discretion to permit them
10 additional time to tender service of process. See Fed. R. Civ. P. 4(m). While Plaintiffs
11 erroneously sent the copy of their summons and complaint to the United States Attorney for this
12 district rather than the “civil-process clerk” at her office, see Fed. R. Civ. P. 4(i)(1)(A)(ii), this
13 deviation is venial. Furthermore, Defendants do not argue that this delay has caused them
14 prejudice. We, therefore, accept Plaintiffs’ attempts to rectify their error.

15 Accordingly, we hereby **DENY** Defendants’ motion to dismiss (Docket No. 10), and
16 expect the Defendants to file a responsive pleading forthwith.

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 6th day of April, 2010.

19 s/José Antonio Fusté
20 JOSE ANTONIO FUSTE
21 Chief U.S. District Judge